



PLANNING COMMISSION

MINUTES

December 10, 2008

7:30 P.M.

CITY OF FREDERICKSBURG
715 PRINCESS ANNE STREET
COUNCIL CHAMBERS

COMMISSION MEMBERS

Edward Whelan, III, Chair
Roy McAfee, Vice-Chair
Dr. Roy Gratz, Secretary
Vic Ramoneda
Ricardo Rigual (not voting)
Susan Spears, Absent
Dr. Paul Ware

CITY STAFF

Raymond P. Ocel, Jr., Director
of Planning & Comm. Dev.

1. CALL TO ORDER

The December 10, 2008 Planning Commission meeting was called to order at 7:30 p.m. by Chairman Ed Whelan who explained the standard meeting procedures.

2. PLEDGE OF ALLEGIANCE

PUBLIC HEARING ITEMS

3. **SUP2008-19:** Kaiser Permanente - Special Use Permit request to erect a free standing sign on the property located at 1201 Hospital Drive. The property is zoned CT, Commercial Transitional and the sign regulations for this district require the issuance of a special use permit in order to erect a free standing sign. The property is designated as Transitional/Office on the Future Land Use Map contained within the 2007 Comprehensive Plan.

Mr. Ocel said that Division 3, Section 78-81 of the Zoning Ordinance permits freestanding signs in the Commercial Transitional (CT) District only by Special Use Permit. Kaiser Permanente has submitted an application to erect a freestanding sign to provide identification for their medical building under construction at 1201 Hospital Drive.

The applicant's property is situated at the intersection of Care Way and Hospital Drive, to the north of Care Way. Attachment 1 shows the location of 1201 Hospital Drive as well as the zoning districts that surround the site.

The proposed sign is generally the same type, size, color and shape as the other signs being used for development in this area. In 1998 all the area labeled on Attachment 1 as zoned Commercial Transitional was rezoned by Medicorp Properties, Incorporated, in accordance with the Comprehensive Plan, from high-density residential to CT. A component of that rezoning requires architecturally compatible signs to be used throughout this project area.

This particular sign will be constructed of aluminum, covered with an acrylic and then sprayed with a teal colored paint. The tallest end of the sign will have a polished aluminum decorative bar.

The monument sign will be setback a minimum of 15 feet from all property lines.

The proposed Kaiser Permanente sign area, including their logo, is approximately 17 square feet. It is uncertain at this time whether the MediCorp Health System name and logo will be included on this sign. If that turns out to be the case, the total square footage for all lettering and logos will be well within the limits of the maximum square footage permitted.

The proposed sign, including supports, is to be 5' in total height from ground level.

Only that portion of the sign which identifies Kaiser Permanente will be internally illuminated.

The submitted sign plan does not include landscape plans, however all freestanding signs in the City are required to be landscaped around the foundation of the sign and this plan will be provided with the sign permit application.

This application meets all of the above requirements except for appropriate landscaping. Staff recommends approval of the Special Use Permit by the Planning Commission with the following conditions:

- That the applicant be required to provide plantings of an appropriate nature to provide year round visual interest. Plantings shall be installed within 30 days of erecting the sign, or as soon as feasible thereafter, given the time of the year.
- The monument sign shall be set back a minimum of 10 feet from all property lines.
- That the sign be internally lit by low wattage lighting.

The Planning Commission had no comment or questions.

There was no public comment on this item

- 4. SE2008-03: Prince Edward Street, LLC** – Special Exception request to rehabilitate the structure located at 1200 Prince Edward Street and convert it into no more than four luxury condominium units with on-site parking. The property is zoned R-4, Single Family Residential District. The land use plan found with the Comprehensive Plan designates the property as Low Density Residential.

Mr. Ocel provided the extensive background on this property.

This is a request to approve a special exception to reconstruct 1200 Prince Edward Street as four luxury, residential condominiums on an approximate 7700 square foot parcel of land zoned R-4, Single Family Residential. The property is located within the historic district and as such the reconstruction of the building will require Architectural Review Board (ARB) approval. The applicant has secured the first phase of its approval to reconstruct this building from the ARB on November 17th. The applicant will return to the ARB for final detailed approval if the City Council approves this special exception.

The adjoining properties are all zoned R-4 and contain residential uses. The Land Use Plan contained within the Comprehensive Plan designates this property and the neighborhood as Low Density Residential.

As Commission members are aware from previous discussions on the history of this property, the proposed use is not a use permitted by right or by special use permit within the R-4 zoning district. The previous use of the property as a multi-family dwelling unit was an operating non-conforming use until the property lost its non-conforming status due to a break in service of more than two years. The property was damaged by fire in September 2003 and has not been used since. A detailed history of the property is provided in the applicants supporting materials.

The applicant has submitted a special exception application to permit the construction of four luxury condominium units with on-site parking for six vehicles. The applicant describes the luxury condominium units as high end downtown units that include approximately a minimum of 2000 square feet of livable space with an estimate of 2-3 bedroom units. The building will contain private and secure parking spaces and elevator. The applicant states that they expect the buyers of such a product to be retirees and or young professionals seeking to be within a short distance to the downtown business district and the train station.

Included within the application materials is a proposed layout plan of the property. The plan depicts the building footprint as approved by the ARB. The rear portion of the building has been removed to make room to park four vehicles within the building. A curb cut on Lewis Street is proposed to serve this parking area. Two parking spaces are located outside the building. The parking space located off of Prince Edward Street is served by an existing curb cut that leads to an area between the subject property and the eight unit apartment building adjacent to this property.

PLANNING COMMISSION RECOMMENDATION JUNE 2006:

At its meeting held on June 28, 2006 the Planning Commission, by a vote of 6-1, recommended approval of the special exception application with eight conditions. Mr. Solley was the Commissioner voting against the approval of the special exception. At the June 14th public hearing, the Commission heard comments from five members of the public. The speakers who spoke were members of the neighborhood and spoke against the issuance of the permit due to the use and building being out of character with the rest of the neighborhood, the past use of the building, and the previous actions/non-actions of the owners. Those speaking were: Robert Carter, Jesse Franklin, Carl Grenn, Laurie Carter, Rodger Maure,

Commission members discussed the application in detail and particularly discussed the following issues: the need for on-site parking and can the site accommodate any more parking spaces; how the interior of the building will be designed; what happens if the permit is denied in light of the deferred blight issue; planning and zoning designations; is the proposed density less of an impact than the previous use; whether the four proposed units are compatible with the neighborhood; homeownership versus rental units; and historic character and significance. After much discussion on these topics and the appropriate conditions to place on the permit, the Commission voted to recommend approval of the permit.

When the Planning Commission and City Council review, consider, and act upon an application for a special exception under City Code 78-967, they shall do so using the following criteria:

a. Whether the grant of a special exception is consistent with the City's Comprehensive Plan;

The future land use map contained within the Comprehensive Plan designates this property as Low Density Residential. Low density residential is defined as up to four dwelling units per acre. The surrounding properties are similarly designated and lie within Planning Area 6-Downtown Neighborhoods. The Plan does not provide specific language or recommendations for this individual property although the application meets one of the issues that relates to preserving the integrity of the historic district by integrating new structures into the exiting fabric of the downtown

historic area. Residential buildings have been an important and constant use in the downtown area and its environs and their continued location in the downtown area should be encouraged.

EXISTING LAND USE

This planning area along with planning area 7 is the heart of the City and reflects the development patterns established when the streets were laid out in 1728. These two areas, combined, include the downtown Historic Fredericksburg District, the Old Mill District as well as other designated historic districts. The area is also characterized by clearly defined neighborhoods.

HISTORIC RESOURCES

Planning area 6 includes the Historic Fredericksburg District and development and redevelopment in designated sections of these areas will need to adhere to the City's historic district regulations. As previously noted, the applicant has secured ARB approval for site planning, and the massing and scaling of the proposed rehabilitated building.

RECOMMENDATIONS FOR PLANNING AREA 6

The following recommendations are relevant to this application:

1. Revise infill development regulations to maintain the integrity of residential neighborhoods while accommodating new growth.
3. Work with property owners to redevelop selected sites without adversely impacting residential development.

Areas of the Comprehensive Plan that are relevant to this application are found in other sections of the Plan and they include:

Community Appearance Goals

Goal 1: Maintain Appearance

The City will maintain its overall appearance such that development and redevelopment results in a cohesive and functional community.

Goal 2: High-Quality Design

The City will achieve a high quality appearance in newly developing and redeveloping areas, such that new and existing developed areas are visually compatible.

Community Appearance Policies

- I. Build on the existing character of the City by respecting existing historic and architectural characteristics in all development and redevelopment initiatives.

The property is located in the Historic District and although damaged by a fire in 2003, ongoing evaluations of the structure have determined that significant historic features remain intact and that the building remains a contributing structure within the Historic District. The ARB has on two occasions taken this into account when approached for its recommendation regarding razing the building and on both instances, the Board has recommended against its demolition most recently on June 9, 2008.

The applicants consulting structural engineer has opined that the remaining structure is sound and salvageable and the applicant intends to incorporate it into the rehabilitation of the structure thereby saving this historic structure. The rehabilitation of the structure will remove an eyesore in

the neighborhood and contribute to the overall character of the neighborhood much like it did for years prior to the fire. (The structure as opposed to the previous apartment use)

Housing Goals

Goal 3: Homeownership

Homeownership in Fredericksburg should be encouraged and opportunities sought to increase homeownership.

This application is one such opportunity although it cannot be guaranteed that the four units will be owner occupied, the type of unit that is being marketed will more than likely be owner occupied. The applicant has stated throughout the application that the units will be marketed as for sale condominium units.

Historic Preservation Goals

Goal 1: Heritage Resources

The City will continue to recognize, protect, and interpret significant architectural, historical, and archaeological resources that are part of the community's heritage.

Goal 2: Historical Experience

Fredericksburg's cultural heritage will be preserved in a manner that enhances the active connection between residents and the City's past, and provides visitors to the City with an authentic historical experience.

Historic Preservation Policies

1. Guide historic preservation efforts by using professional standards to ensure the integrity of historic resources.

Historic Preservation Initiatives

1. Examine existing zoning requirements to assure their consistency with the goal of historic preservation. Amend the City's zoning ordinance to allow for the following: more varied uses to encourage reuse of historic structures; greater flexibility in the application of existing zoning requirements; and traditional development patterns that preserve the City's historic character.
2. Develop local incentives, such as tax credits, to encourage the maintenance and development of the City's historic character.
3. Encourage preservation groups to educate the public on the historic character of the City and the benefits of preserving it.

By rehabilitating the structure as opposed to razing it, the historic structure is protected and continues as part of the community's heritage. The rehab also enhances the active connection between residents and the City's past.

The ARB, in reviewing the first part of the application applied both Zoning Ordinance and Historic District Handbook standards to ensure the integrity of this historic resource, this meeting one of the policies of this Chapter. The applicants architect included these standards into the rehab plans for the structure.

The applicable initiatives include providing for more varied uses to encourage reuse of historic structures and greater flexibility in the application of existing zoning requirements. The property

owner will also be able to apply for rehabilitation tax credits that will assist in the maintenance of this structure.

Finally, as part of this process over the past several years, the City's local preservation group, HFFI, has provided its input that has assisted in educating the public on the historic character of the City and the benefits of preserving the structure.

The applicant provides an analysis of this review criterion on pages 6 to 9 of the application.

b. Whether the special exception is consistent with the goals, purposes, and objectives of the City's Zoning Ordinance;

The property is zoned R-4 and a four unit luxury condominium building is not a use permitted by right or by special use, hence the application for a special exception. The R-4 zoning district was established to provide for single family detached dwellings in both developed and undeveloped areas of the City. The maximum density of four dwelling units per acre recognizes prevailing single-family densities in established residential areas where in-fill development may occur.

Additionally, section 78-991 of the Zoning Ordinance specifically provides that a special exception can be issued by the City Council, the Board of Zoning Appeals, or other designated body or official specifically provided by this article (Zoning) whereby a use, standard, or other requirement of this article may be modified or waived, provided that such exception would not have an undue impact upon or be incompatible with existing or planned development in the general area and that it is otherwise consistent with this article. (Zoning)

The previous multi-family use operated as a non-conforming use until the apartments were not re-established within a two year time period. Therefore, any further use of the property would have to comply with the R-4 zoning regulations or obtain approval of a special exception to use the property for another use. The special exception provides a remedy in such circumstances where a non-conforming use is no longer permitted and able to operate. In cases such as this one, establishment of a use not permitted by the underlying zoning may be permitted as long as it meets certain criteria and this application falls within this category. The applicant provides that this process enables a fair, reasonable and equitable relief to property owners who have suffered such devastating hardships at no fault of their own, irrespective of whether the prior use was nonconforming, so long as the continuation of such use does not have an adverse impact on the surrounding neighborhood. As noted during previous public hearings neighbors of this property raised a number of issues that were detrimental to the neighborhood and the applicant has sought to address them in this application and they include:

The applicant states that the issuance of a special exception to construct four luxury condominiums on the property will: (1) improve an overcrowding condition that previously existed on the property by reducing the number of units to four; (2) provide all required parking on-site versus all parking on the street with the previous use; (3) placing all trash receptacles within the building; and (4) constructing and marketing for sale units versus rental units.

Section 78-151(e) of the Zoning Ordinance enables a property owner the ability to apply for a special exception to allow the partial or full reconstruction of a nonconforming structure or building in which a nonconforming use is located that is damaged or destroyed by fire or other casualty to an extent exceeding 50% of its assessed value, provided the City Council finds that such building, reconstructed as a nonconforming structure or use, will not adversely affect the surrounding neighborhood to any greater extent than the prior structure or use. Staff concurs with the applicant's statement on page 10 of the application that the application meets or exceeds these criteria in that over 50% of the assessed value was destroyed by fire and that the proposed use will not adversely affect the surrounding neighborhood to any greater extent than the prior use.

The applicant provides an analysis of this review criterion on pages 9 to 12 of the application.

c. Whether there has been sufficient period of time for investigation and community planning with respect to the application.

The process to discuss this project has been in process for the past several years. Most recently, the City has invoked a provision of the State Code to designate this property as a blighted property and the Planning Commission stated that it did not support this designation by the City and supported a re-use of the building. This is a similar stance the Commission took two years ago when the Commission was asked for its input on the first blight determination. The Commission also recommended that a similar special exception application be approved to rehabilitate the structure for four luxury condominium units. The City Council voted to deny the special exception in 2006 and the structure has sat vacant since. However, recently, at the bequest of the City, the property owners made several interim improvements to the property.

As part of this review process, the Commission will hold a public hearing on this application and the City Council will also hold a public hearing once the Commission makes its recommendation to the City Council. The ARB will also hold another public hearing to review the details of the renovation of the building. Staff believes that by both City and public input over the past 5 years, this criteria has not only been met but exceeded.

d. Whether the special exception is consistent with the principles of zoning and good zoning practice, including the purpose the district in which the special exception would be located, existing and planned uses of surrounding land, the characteristics of the property involved, and the adverse impacts of the proposed use.

The applicant suggests that the proposed use is consistent with the neighborhood land uses although the density being proposed is greater than what is permitted in the R-4 zoning district but in other respects is consistent with other multifamily units in close proximity to the property, one being next door at 1202 Princess Edward Street. This structure contains eight units.

Given the varied nature of some of the uses in the neighborhood it is conceivable that a four unit condominium could be situated on this property within this district. The property is adjacent to a building that contains eight rental units and is located within a block of a building located at the corner of Prince Edward Street and Amelia Street that contains 13 apartments according to City records. The area surrounding the commercial downtown area has a collection of different uses and they have, to a great degree coexisted over time.

The applicant has provided information on the proposal to re-use the building for residential purposes. Commissioners will recall that the applicant initially proposed up to 12 units within the building but has reduced the number of units to address issues raised by the neighborhood and the City and they include density, noise, parking, location of trash containers, adaptive re-use of a historic structure, and impact on City services. The proposal for four units appears to address these issues in a positive manner by making it more commensurate with the surrounding properties.

As provided earlier in this memo, this property as well as surrounding properties are all zoned R-4, are planned for low density residential uses and are located within the historic district with the exception of the properties to the west. The applicant maintains that since this structure has been utilized as either multifamily or a commercial use since it was constructed, its integration into the neighborhood has been well established and with this proposal, its proposed use will be more in harmony with the neighborhood than the prior multi-family apartment use.

e. Whether the proposed use or aspect of the development requiring the special exception is special, extraordinary or unusual.

The applicant states that this project is special due to an extraordinary and unusual fire event that damaged the building which in turn makes it a difficult hardship for the property owners to re-use the property. In addition, the applicant further supports this by stating that the property has been utilized as a multifamily or commercial use over the entire span of its existence and to utilize it in another manner at this time would be a hardship. Proposing to establish four luxury condominium units within this historic building is in keeping with historical use of the building and therefore, satisfies a goal of reconstruction and rehabilitation of the City's historic properties.

Although the proposed use in itself is not special, extraordinary or unusual, the applicant contends on page 12 of the application that due to the history of the property being used for multifamily and commercial uses and it being destroyed by a fire, that establishing four luxury condominium units within this building and the investment that it will bring into the neighborhood is a special aspect of the development requiring the special exception to reconstruct the building.

The applicant also states that this is a unique opportunity to provide a luxury homeownership opportunity within a short distance of the downtown area and the train station, something that is not available in the surrounding area.

f. Whether the applicant has demonstrated that its application meets all these criteria.

The applicant's submittal provides all the project specific information that is available and addresses the special exception criteria and believes that the proposed project meets or exceeds the criteria requirements for issuance of the special exception.

Based upon an analysis of the application including the plan to renovate the historic building within the context of the neighborhood, staff recommends approval of the application due to its meeting the special exception review criteria, and further recommends the following conditions. The conditions are similar to the ones recommended during the review of the previous special exception. Much like the conditions on other permits, the conditions below seek to ensure that the project is built the way in which it is proposed. Additionally, timeframes to obtain a building permit and obtain final inspection of the shell of the building are included once again. They were originally included due to the need to abate the blight on the property. Although the condition of the property has been much improved since last month it is still necessary to include time frames for these same permits and approvals. However, it is not practical to condition the permit using the same timeframes given the current and projected economic market into 2010. The applicant has suggested that they be permitted to submit plans for the building permit for the building shell within 36 months of the date of approval versus the four month requirement when this application was under review two years ago. Likewise, the applicant has suggested the time limit to pass final inspection of the shell be 60 months as opposed to 18 months.

While the condition of the economy dictates that these timeframes be longer than two years ago, the property remains blighted (to a lesser degree due to recent improvements) and that blight must be eradicated as quickly as possible. Therefore, the timeframes in conditions d) and e) have been modified.

- a) The building shall include a maximum of four luxury condominium units with a minimum livable space of 2000 square feet each.
- b) All required parking shall be provided on site.
- c) All trash containers shall be stored within the building.

- d) Complete plans for the building permit for the building shell shall be submitted to the Building Official within twenty-four months of the date of this Resolution. If not, then this special exception shall expire and shall be null and void.
- e) The project shell shall pass final inspection within 36 months of the building permit being issued. At this point, the rear of the current structure will have been demolished, the roof built, windows and doors installed, elevator installed and operational, parking lot completed, all life safety systems are operational, and all other requirements for final shell inspection completed. If not, City Council may revoke this special exception.
- f) The property shall be developed in substantial accordance with the plan prepared by James O. McGhee Architects, P. C. dated 24 Oct. 2008 entitled "1200 Prince Edward St."
- g) The Building and Development Services Department will report to City Council on the applicant's good and timely efforts to respond to the Building and Development Services questions during the permitting process.

Mr. Ocel advised Commissioners, and those present from the public, that Mr. Carl Grenn of 1202 Prince Edward Street called the Planning Office to voice his continued opposition to the issuance of a Special Exception.

Dr. Gratz asked for clarification of the number of apartments that had previously existed at this location. He noted that the staff report states 17 apartments had existed and that 19 apartments existed.

Mr. Ocel said this information was provided with the application and it depends on who you talk to as to the number of units. However, he said, 17 apartments existed at this location at the time of the fire.

Mr. Charlie Payne, 725 Jackson Street., Attorney representing the applicants provided highlights of the proposal. He also asked that with the current economic climate that condition "d)" be revised to remove the word "shall" and replace it with "may", to allow the Zoning Administrator the flexibility to extend this timeframe if he sees that substantial progress is being made.

Mr. Payne also said he is concerned with the 36 month build out requirement and asked if this could be extended to a minimum of 48 months.

There was no public comment on this item.

5. Zoning Ordinance Text Amendment – Amendment to City Code Chapter 78, Zoning, Planning and Development, Article III, Zoning, Division 34, Violations and Penalties; Division 5, Nonconforming Uses and Structures; Division 31 Variances, Special Use Permits and Special Exceptions; Article I, In General, Board of Zoning Appeals and Article IV, Subdivisions. The 2008 session of the General Assembly enacted bills and resolutions related to land use and zoning. These text amendments are proposed to in response to the necessary changes in order to bring the Zoning Ordinance into compliance with the Code of Virginia, specifically, Title 15.2, Counties, Cities and Towns, Chapter 22, Planning, Subdivisions of Land and Zoning. Other amendments being proposed are in response to new

2008 legislation which are recommended to be incorporated into Chapter 78, Article III Zoning in the aforementioned Divisions.

Ms. Debra Ward provided the background of the multiple zoning ordinance text amendments, as follows:

Each year the City Attorney provides a summary to department heads of legislation enacted by the Virginia General Assembly that may be relevant to their respective departments.

The 2008 session of the Virginia General Assembly enacted 37 bills and resolutions related to land use and zoning. The ten text amendments proposed are (1) in response to the 2008 legislation which staff recommends be incorporated into the Zoning Ordinance, or (2) necessary changes in order to bring the Zoning Ordinance into compliance with the Code of Virginia, specifically Title 15.2, Counties, Cities and Towns, Chapter 22, Planning, Subdivisions of Land and Zoning.

House Bill 430 – Zoning provisions for inspection warrants.

Amends § 15.2-2286 to provide that a zoning ordinance may provide for the issuance of inspection warrants by a magistrate or court. The Zoning Administrator or his agent may present sworn testimony to a magistrate or court and if the testimony establishes probable cause that a zoning ordinance violation has occurred, request that the magistrate or court grant an inspection warrant to enable the Zoning Administrator or his agent to enter the subject dwelling to determine whether violations of the zoning ordinance exist. The Zoning Administrator or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant.

Synopsis – In the performance of their job, zoning officials are at times required to inspect a dwelling or commercial establishment to determine if a violation of the zoning ordinance exists. Upon denial of access to a dwelling or commercial building by the property owner or tenant, the enactment of HB 430 provides, for the first time, zoning officials the authority under the Code of Virginia to obtain an inspection warrant.

Recommendation – Staff recommends the addition of Section 78-1105.5 to Article III, Division 34, Violations and Penalties, as another tool for use in the enforcement process.

House Bill 445 – Zoning violations related to overcrowding.

Amends § 15.2-2286 to provide that no fines shall accrue against the owner or managing agent of a single-family residential dwelling unit for the violation of a zoning ordinance regulating occupancy limits during the pendency of any legal action commenced by such owner or managing agent against a tenant to eliminate an overcrowding condition.

Synopsis - HB 445 protects the owner or managing agent of a single-family residential dwelling from penalty for overcrowding while he/she is involved in a legal action with the tenant for an overcrowding violation.

Recommendation – For compliance with the Code of Virginia, staff recommends an amendment to the Zoning Ordinance by the addition of Section 78-1104(b) to Article III, Division 34, Violations and Penalties.

House Bill 1061 – Appeal period.

Amends § 15.2-2286 to add overcrowding violations of the zoning ordinance to shortened (not less than 10 days) appeals process in zoning ordinance.

Synopsis – Currently § 15.2-2286 permits an appeal period of less than thirty days, but not less than ten days, for a notice of zoning violation involving temporary or seasonal commercial uses, parking of commercial vehicles in residential zoning districts or similar short-term, recurring violations. HB 1061 adds maximum occupancy limitations of a residential dwelling to the list of violations that may have a ten-day appeal period.

Recommendation – A priority of City Council is to address overcrowding issues and the associated zoning violations of the maximum occupancy limitations for single-family dwelling units. Staff believes a shorter appeal period will be an effective tool in addressing overcrowding issues in a more expeditious manner. Likewise, other types of minor zoning violations may be included in an amendment to shorten the appeal period given the nature of the violations. Recommend an amendment to the Zoning Ordinance by the addition of Section 78-1105(c) to Article III, Division 34, Violations and Penalties, and an amendment to Section 78-6(b), Article I, In General.

House Bill 1086 – Written notice of zoning violations.

Amends § 15.2-2311 to provide that a written notice of a zoning violation or a written order of the Zoning Administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements under general law.

Synopsis – HB 1086 clarifies for the zoning official what is required to satisfy notice requirements for zoning violations. Proof of registered or certified mail sent to the last known address of a property owner will expedite enforcement and may prove useful in legal proceedings.

Recommendation - Amendment to the Zoning Ordinance by the addition of Section 78-1105(d) to Article III, Division 34, Violations and Penalties.

House Bill 1107 – Fines related to overcrowding violations.

Amends § 15.2-2286 to increase the maximum fines for repeat violations of ordinances regulating the number of unrelated persons in single-family residential dwellings.

Synopsis – Under the current Zoning Ordinance a conviction for excessive residential occupancy is considered a misdemeanor and punishable by a fine of not less than \$10 and not more than \$1,000. The Code of Virginia § 15.2-2286(5) allows a permitted provision in zoning ordinances making any conviction resulting from a violation regulating the number of unrelated persons in single-family residential dwellings punishable by a fine of up to \$2,000. Failure to abate the violation within the specified time period shall be punishable by a fine of up to \$2,000 and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of up to \$2,500.

House Bill 1107 increases the maximum fine for repeat violations regulating the number of unrelated persons in a single-family residential dwelling from \$2,000 to \$5,000, and increases the fine for failure to abate the violation during any succeeding 10-day period and for each 10-day period the violation remains unabated from \$2,500 to \$7,500.

Recommendation – Staff recommends this legislation be used to the fullest extent as a deterrent for excessive residential occupancy through an amendment to the Zoning Ordinance by the addition of Section 78-1104(b) to Article III, Division 34, Violations and Penalties.

House Bill 679 – Civil penalties for violations.

Amends § 15.2-2209 to require the General District Court, upon a finding of liability, to order a violator of a zoning ordinance to abate or remedy the violation in compliance with the zoning ordinance within a period not to exceed 30 days. The bill also provides that should the violator choose to waive trial, admit liability, and pay the civil penalty, the violator will have to first agree in writing to abate or remedy the violation within a specified timeframe. When civil penalties for a zoning ordinance violation total \$5,000 or more, the violation may be prosecuted as a criminal misdemeanor.

Synopsis –Zoning Ordinances utilize two methods of punishment for violations: (1) Criminal offenses that require a court hearing and a subsequent decision of a judge. Currently the Zoning Ordinance stipulates that upon conviction the court establishes a time period for the violator to abate or remedy the violation. House Bill 679 now limits that time period prescribed by the court to less than 30 days. (2) The imposition of civil penalties. Generally imposed as a deterrent to repeat violators, these may be paid by the offender without a court appearance or appealed by the recipient in General District Court. Once filed in General District Court, decisions by a judge may result only in the payment of fines with no guarantee that the violation will be abated. The primary goal of any zoning enforcement action is to bring a property into compliance with the zoning ordinance. With the adoption of language from House Bill 679 when the violator chooses to waive trial and admit liability, in addition to payment of the fine, the violator will now have to agree in writing to abate or remedy the violation within a specified timeframe.

It also seems prudent to take advantage of House Bill 679 that allows civil penalties for zoning ordinance violations that total \$5,000 or more to be prosecuted as a criminal misdemeanor, staff believes this will provide a further disincentive to violate the Zoning Ordinance.

Recommendation – Staff recommends the adoption of amendments to Section 78-1104.5(b) and Section 78-1104.5(b) to Article III, Division 34, Violations and Penalties.

House Bill 1078 – Vested rights and nonconforming uses.

Amends § 15.2-2307 to make several changes to the nonconforming use section, including (i) that a locality shall use square footage and building code provisions in determining whether a nonconforming use has been enlarged or structurally altered; and (ii) providing that when a property owner has either obtained a certificate of occupancy or has paid taxes to the locality for a building or structure for a period in excess of 15 years, a zoning ordinance may provide that such building or structure shall be nonconforming, but not illegal.

Synopsis – This House Bill clarifies the method that must be used to determine whether a nonconforming use has been enlarged or structurally altered. In addition this legislation aids in property owner protection of unlawful structures in two ways: (1) If a property owner obtains a building permit, builds the structure in accordance with the building permit and later obtains a certificate of occupancy for the structure then, even if the building violates the zoning ordinance, the City must consider it to be a lawfully nonconforming structure and cannot order the owner to remove it or otherwise alter it. (2) A property owner with an unlawfully nonconforming structure will automatically receive lawful nonconforming status if all the taxes have been paid for at least fifteen years. [note: all buildings are structures but not all structures are buildings, so this law also pertains to signs and accessory structures] This law does not change how the Zoning Ordinance governs nonconforming lots, it only addresses buildings, and illegal uses will remain illegal.

Recommendation – Adoption of the proposed amendments to Section 78-147(b) and Section 78-147(a) to Article III, Division 5, Nonconforming Uses and Structures, in order to bring the Zoning Ordinance into compliance with the Code of Virginia.

House Bill 1079 – Structures permitted by variance.

Amends § 15.2-2309 to provide that a structure permitted by a variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

Synopsis – This bill protects the property owner in that once a variance is granted, the property shall be treated as conforming for all purposes under state law and local ordinances, but allows for local government to maintain regulations regarding the expansion of structures permitted by variance.

Recommendation – Amendment by the addition of Section 78-992(f) to Article III, Division 31, Variances, Special Use Permits and Special Exceptions, to bring the Zoning Ordinance into compliance with the Code of Virginia.

House Bill 1177 – Validity of plats.

Amends §§ 15.2-2260 and 15.2-2261 to provide that once a plat for all or a portion of a multiphase development is recorded, the preliminary plat shall remain valid for a period of five years from the date of the latest recorded plat of subdivision for the property. Also, an approved final subdivision plat that has been recorded, from which any part of the property subdivided has been conveyed to third parties (other than to the developer or local jurisdiction), shall remain valid for an indefinite period of time, unless and until any portion of the property is subject to a vacation action.

Synopsis – This bill enables a landowner, who is subdividing property, the ability to maintain the validity of a preliminary plat for a longer period of time (5 years) once a portion of a multi-phase development is recorded. The remaining parcels can then be recorded all at once or in phases within the 5-year period. Additionally, the legislation permits a recorded final subdivision plat to remain valid for an indefinite period of time if any portion has been conveyed to a third party, thus not penalizing the third party purchaser.

Recommendation - Adoption of two proposed additions to the Subdivision Ordinance, Article IV, Division 4, Preliminary Plats and Plans, Section 78-1203(i) and Article IV, Division 5, Final Plats and Plans, Section 78-1230(e) in order to bring the Subdivision Ordinance into compliance with the Code of Virginia.

Senate Bill 393 – Rebuilding after natural disasters.

Amends § 15.2-2307 to provide that a zoning ordinance shall permit the owner of any residential or commercial building damaged or destroyed by a natural disaster or other act of God to repair, rebuild, or replace such building to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance.

Synopsis – This bill gives equal opportunity to all property owners, residential and commercial, conforming and nonconforming, to repair or replace buildings destroyed by a natural disaster or other act of God. If a building damaged or destroyed by a natural disaster or other act of God cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so.

Recommendation – To promote rapid recovery efforts after a natural disaster and bring the Zoning Ordinance into compliance with the Code of Virginia necessitates an amendment to Section 78-151(e) Article III, Division 5, Nonconforming Uses and Structures.

Staff also recommends the addition of language to these same two sections addressing legislation enacted in 2006 that provides for a two year reconstruction period and an extension of up to two additional years to complete reconstruction if the City is under a federal disaster declaration and the damage is a direct result of the disaster.

Mr. Ocel added that these proposed text amendments had been discussed previously at a Planning Commission worksession and that only minor changes had been made since that meeting.

There was no Commissioner or public comment.

6. Zoning Ordinance Text Amendment- Amendment to the City Code Chapter 78, Zoning, Planning and Development, Article III, Zoning, by adding a new division, Division 34, Planned Development Mixed Use. This new mixed use district is being proposed to assist in implementing the goals and policies of the 2007 Comprehensive Plan.

Mr. Ocel said that the Mixed Use Ordinance is being proposed in order to implement the Comprehensive Plan's references to the Jumpstart Plan. The Jumpstart Plan envisioned the redevelopment of 11 areas in the City while emphasizing mixed use projects. While the CD, Commercial Downtown zoning district is the truest mixed use ordinance in the Zoning Ordinance, this zoning is not appropriate for the various areas depicted in the Jumpstart Plan located outside of the downtown area.

The development of a mixed use ordinance is an identified goal of the Comprehensive Plan and adoption of a mixed use ordinance will begin to implement one of the objectives of the Plan.

Components of the ordinance include:

Purpose and Intent: Provides the basis of the district, where they can be established, the type of development, establishment of certain uses, promoting a compact mixed-use design, pedestrian friendly walkable streets, a variety of housing types, mixed-use commercial neighborhood centers, and provides substantial flexibility from the conventional use and dimensional requirements of the general districts.

Permitted Uses: The uses listed provide a variety of commercial and residential opportunities that can be, when used in combination, meet the requirements of a mixed use development and meet the purpose and intent section of the district. Note that a use not listed may be approved if it is compatible with the purpose and intent of the planned development mixed use district.

Site size requirements: The minimum site size proposed is two acres. The minimum site and yard requirements, including site size requirements for residential and non-residential uses, the setback of dwelling units from site boundaries and private drives, parking areas and walkways, separation between townhouse buildings (dwelling groups), and common areas will be determined by the approved generalized development plan (GDP). In the event such requirements are not depicted on the approved GDP, the requirements set forth in division 9 of the Zoning Ordinance shall apply to single-family detached and attached dwellings, and the requirements set forth in division 10 shall apply to multi-family dwellings. This is similar language found in the PDC and PDR district regulations that provides the City as well as the applicant, a greater degree of flexibility in designing the development.

Bulk Regulations: Bulk regulations for planned development mixed use districts shall be shown on the approved GDP as follows:

Building height. In buildings not containing ground floor retail, building heights shall be no more than eighty (80) feet. In buildings containing ground floor retail, the maximum building height shall be eighty-five (85) feet.

Floor area ratio. 2.0. Additional density may be approved by the City Council up to a maximum 3.0.

Residential density. The calculation of maximum density shall be based upon the total project area minus any portion of the total project area to be devoted to non-residential uses.

Single Family Detached: Up to 6 units per acre.

Single Family Attached: Up to 10 units per acre.

Multi-Family: Up to 16 units per acre.

Student Housing: Up to 60 units per acre when no other residential units are proposed.

Notwithstanding any other provisions of this division the City Council may approve an increase in density levels in order to meet the purpose and intent of the District.

The minimum landscaped open space shall be (fifteen) 15 percent of the total gross area. Of that area, no more than (five) 5 percent may be situated within the 100-year floodplain. Additionally, no more than (five) five percent of the required (fifteen) 15 opens space may consist of land area containing major utilities.

The height, floor area ratio for commercial areas, residential density, and open space ratio are all geared towards permitting the type of densities that are envisioned in the Jumpstart Plan. The densities are similar to those found in the historic commercial downtown area.

Additional regulations. In order to insure that a project contains a mix of residential and commercial uses, minimum and maximum percentages are as follows:

Commercial uses. At least 40% and no more than 65% of the gross land area of the district shall be devoted to commercial uses. In the case of vertically mixed use buildings, the use on the ground floor shall be used to calculate this percentage.

Residential uses. At least 20% and no more than 60% of the gross land area of the district shall be devoted to residential uses.

Vertical Mix. At least 20% of the buildings containing commercial uses within the district shall contain uses from at least two (2) different use categories. The applicable use categories are professional office, retail, and multifamily dwelling units above the first floor.

Recreational facilities shall be provided based upon the type, number and mix of residential units proposed.

In order to address the design of both the site and the buildings contained within a project the following guidelines are proposed. Note that these regulations provide flexibility in the amount of detail shown within the GDP submittal as it will be difficult to show detailed designs if a project will be development over many years as will occur with larger developments.

The GDP may include phases or land bays with the following design principles and guidelines as part of the narrative and illustrative GDP submission:

- I. Site design principles to be shown:
 - Block Plan
 - Hierarchy of Streets
 - Neighborhoods
 - Open Space
 - Uses & Locations
 - Density
 - Massing
 - Variety of Building Types
 - Summary of Design Principles of Proposed Plan

- II. Development design guidelines:

The Framework Plan shall include:

- A Framework for Streets
- Vehicular Circulation
- Pedestrian & Bicycle Circulation
- Open Space Plan
- General Land Use Plan
- Individual Parcel Plans

The development design guidelines are a set of criteria for those elements critical to achieving the goals set out by the site design principles. As part of the submission, these guidelines should explain the structure of the framework plan, streets and open space and how they apply to each land bay, phase or development parcel (or parcels, if applicable). The basic organization of the site is structured by the framework plan and locates major arterial streets and open space. As part of this submission, a plan diagram illustrating the concept of the major framework streets and the interconnected network and streets that will serve the development area shall be shown. Dimensioned and delineated street sections, park plans, land-use and infrastructure descriptions and diagrams identify the plan defining development components. The development design guidelines shall address proposed street design such as dimensions, character and materials; open space intent, character and criteria; and parcel development criteria including block size, dimensions, neighborhood park requirements; and general building height, massing, frontage and orientation.

- III. Building Guidelines

- Frontage and Orientation
- Front Lot Line Coverage and Setbacks
- Heights and Massing
- Parking and Service

Architectural Standards – Guidelines / Building Types:

- Illustrative Example of Proposed General Palette of Materials
- Illustrative Examples of the range of Building Types

- IV. Illustrative Drawings and Proposed Development Program

Illustrative Drawings:

- As part of the Design Principles-Guidelines for the PDMU District's GDP submission the applicant shall submit illustrative drawings including, at a minimum, an overall illustrative development plan and a proposed build-out of the plan.

Development Program:

- A proposed development program shall also be submitted outlining the proposed mix of uses and density levels including the proposed number of housing units and types, square footage of commercial office, types of retail and any other proposed uses. If the project proposes numerous land bays, phases or parcels, the program shall illustrate an estimated proposed breakdown of uses and density per each bay, phase or parcel.

Notwithstanding any other provisions of this division the City Council may adjust the percentage ratios for those uses set forth above.

General standards. The following general standards and design criteria shall apply to all projects development under this zoning category:

The development offers a variety of two or more of the following uses: commercial, residential, office;

The development consists of an orderly and creative arrangement of land uses, both in respect to each other and to adjacent properties;

The application provides a comprehensive and integrated transportation system that separates pedestrian and vehicular traffic, including roadways, bicycle paths, pedestrian walkways, and public transportation facilities, where applicable;

The application provides opportunities for cultural, educational, or recreational facilities for all segments of the development;

The site design and structures take advantage of their natural and manmade environment and to address sustainability.

The application provides for adequate public facilities;

The planned development substantially conforms to the Comprehensive Plan with respect to type, character and intensity of use and public facilities;

The development does not hinder, deter or impede development of surrounding undeveloped properties in accordance with the Comprehensive Plan;

Sidewalks and other pedestrian pathways that link developed areas of the City and the proposed development are in accordance with the Comprehensive Plan, Zoning Ordinance or deemed appropriate for the development;

The proposed land uses are recommend in the Comprehensive Plan or JumpStart Plan as appropriate uses in the particular planning area in which the development is to be located; and

Where applicable, the development includes special provisions for the identification, restoration and preservation of buildings, structures, and sites which have historic, architectural, or archeological significance.

The buildings shall be designed and arranged in such a way as to promote energy efficiency.

Landscaping and open space shall be used to provide shading, screening and erosion and sediment control.

The development shall reflect the existing natural topography of the site by preserving the natural character and existing trees to the greatest extent possible.

The Generalized Development Plan: This mixed use zoning category constitutes conditional zoning. The proposals in the rezoning application shall constitute proffers, and the features in the approved GDP shall constitute conditions of the rezoning and a rezoning application to this district shall address the following criteria:

The GDP shall exhibit a compact pattern of development that will effectively interconnect, through both pedestrian and vehicular systems, all uses within the development and, where appropriate, extending into the existing surroundings.

The GDP shall include design guidelines submitted in narrative and graphic format which will address architectural materials and design as well as a comprehensive sign plan.

Once the GDP is approved the Director of Building and Development Services may review and administratively approve specific site plans determined to be in general accordance with the overall GDP. This is a similar provision found in the PDC district.

Off-Street Parking: Although each mixed use development will provide areas for parking that meets the parking space requirements of the Zoning Ordinance it is envisioned that to a certain extent, shared parking arrangements will be possible due to the mix of uses and their hours of operation. To that end off street parking requirements maybe reduced by the City Council with the approval of a parking management plan that is adopted as part of the GDP. The amount of spaces may be reduced by reason of different hours of activity among the various uses, and shall be subject to such arrangements as will guarantee the permanent availability of such spaces.

Street and Pedestrian Network: Each development shall promote interconnectivity and that provides for multiple travel options and points of connection to existing streets, including sidewalks and other pedestrian access. Developments shall install sidewalks on both sides of the internal streets with pedestrian connections to existing streets.

Mr. Ocel said the makeup of the proposed ordinance is similar to that of other ordinances. He said he was not looking for a vote this evening and intends to refine the ordinance further.

Mr. McAfee referenced "General Standards. #8. He suggested that the word "undeveloped" be removed.

Mr. Ocel agreed with this suggestion.

Mr. Whelan referenced the 85' height and asked if the Fire Department would be able to service a building that high.

Dr. Ware referenced section 78-626 (1) and asked for clarification of structures exceeding 40'.

Mr. Ocel said that if a building exceed 40 feet the front of the building would need to be set back further on the property.

Dr. Ware asked if there are setback requirements proposed in the mixed use ordinance.

Mr. Ocel said they will be shown on the GDP and that it would depend of the use.

There was no public comment on this item.

UNFINISHED BUSINESS/ACTION ITEMS

7. **SUP2008-19:** Kaiser Permanente - Special Use Permit request to erect a free standing sign on the property located at 1201 Hospital Drive. The property is zoned CT, Commercial Transitional and the sign regulations for this district require the issuance of a special use permit in order to erect a free standing sign. The property is designated as Transitional/Office on the Future Land Use Map contained within the 2007 Comprehensive Plan.

Mr. Ocel said he had nothing further to add since the public hearing.

Dr. Gratz moved to approve the special use permit for Kaiser Permanente with the conditions outlined in the staff report.

Mr. Ramoneda seconded the motion.

Motion carried unanimously by a vote of 5 - 0

8. Zoning Ordinance Text Amendment-Amending City Code Chapter 78, Zoning, Planning and Development, Article III, Zoning, Division 4, Parking and Loading and Private Streets in order to implement a fee in lieu of parking program; eliminating the requirement of up to 5 parking spaces for a new business or expansion of an existing business or change of use; provide credit for on-street parking directly abutting a property and decreasing the amount of parking required for uses in the downtown area. These amendments are applicable only to an area in the downtown bounded by Amelia Street to the north; Prince Edward Street to the west; Lafayette Boulevard to the south and Sophia Street to the east.

Mr. Ocel said he had hoped to receive input from DRMI. However, to date he has not received their comments. He said he is scheduled to meet with Mr. Walker, President of DRMI and hopes to receive their comments/concerns at that time. He said EDA is also interested in this ordinance.

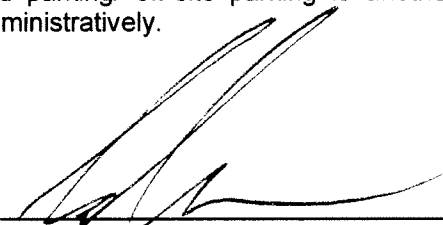
Mr. McAfee asked when Commissioners and staff can expect to have the DRMI and EDA comments.

Mr. Ocel said he hopes to have all their input by the January 14, 2009 Planning Commission meeting.

OTHER BUSINESS

9. The October 29, 2008 Planning Commission Minutes were approved as submitted
10. The September 24, 2008, October 27, 2008, and November 12, 2008 Worksession Minutes were approved as submitted
11. Planning Commissioner Comment - None.
12. Planning Director Comment
- Mr. Ocel noted that in he has been in discussions with Councilwoman Greenlaw regarding streamlining the approval process. Specifically, staff is looking into having site plans approved administratively. He said he will set up a meeting with Commissioners McAfee and Whelan, and Councilwoman Greenlaw in the near future to discuss this further. Also, he said, staff is looking into allowing someone that builds in the floodplain to seek approval administratively instead of obtaining a special use permit. Shared parking/ off-site parking is another item that staff is looking at to be approved administratively.

ADJOURNMENT



Edward F. Whelan, III, Chair

